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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SHARON PATRIEE ERICKSON, Defendant and Appellant.	A151285 (Humboldt County Super. Ct. No. CR1404979)

A jury found defendant Sharon Patriee Erickson guilty of one count of transporting a controlled substance for sale (Health & Saf. Code, § 11352, subd. (a)), a felony. The court suspended imposition of sentence and placed her on probation for a term of three years. On appeal, defendant contends the judgment must be reversed because the trial court erroneously excluded evidence of a spontaneous utterance made by a front seat passenger when a deputy sheriff pulled over the car defendant was driving. The judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

The following evidence was introduced at trial.

On August 27, 2014, at approximately 12:30 a.m., Humboldt County Deputy Sheriff Dennis Gagnon conducted a traffic stop of a car with illegally tinted windows. Defendant was in the driver's seat. When defendant tried to exit the car, Gagnon ordered her to remain inside. Gagnon waited until a backup officer arrived, then approached the

car. A woman named Cammie F. was in the front passenger seat, and Frank S. was sitting in the back seat.

Deputy Gagnon ascertained that defendant did not have a valid driver's license and asked her to step out of the car. Defendant did so, holding a "brown purse-like bag." Gagnon took the purse and placed it on top of the car. He then ran a warrant check and discovered Frank S. had a felony arrest warrant. Gagnon arrested Frank S. and also arrested defendant for driving with a suspended or revoked license. Because Cammie F. had only an infraction warrant, Gagnon released her without a search.

Deputy Gagnon searched the car and found a zippered bag in the center console between the two front seats. The bag contained glass pipes, syringes, and other items. He also found a crystalline substance weighing 1.7 grams on the front floorboard. None of these items gave rise to any charges.

Deputy Gagnon then transported defendant and Frank S. to the county jail. Gagnon took an inventory of the purse taken from defendant and found a digital scale, a home walkie-talkie, a journal, and a brown substance wrapped in cellophane. The purse also contained two tubes of lip gloss and an over-the-counter nasal spray bottle, but no photographic identification belonging to defendant. A cell phone was found on defendant's person. After Gagnon discovered the scale and brown substance, defendant denied that the purse and its contents were hers. Defendant did not respond when Gagnon thereafter asked why she had exited the car with the purse.

Testing of the purse's contents disclosed the following. The brown substance was a "usable amount" of heroin, 25.748 grams, and defendant's DNA was on the lip gloss tubes. The nasal spray bottle had at least two DNA contributors, but their sources could not be determined.

A forensic examination of the cell phone recovered from defendant led an investigator with the District Attorney's Office to conclude the cell phone belonged to defendant. Although it could not be conclusively determined who sent the outgoing text messages found on the cell phone, the outgoing messages had a "signature" of "Patrie." Defendant's middle name is "Patriee."

The District Attorney's Chief Investigator offered his expert opinion that the cell phone's incoming and outgoing text messages related to sales of controlled substances. Based upon those text messages, the amount and packaging of the recovered heroin, the digital scale, and the journal, he opined that defendant possessed the heroin for sale. He also noted that a walkie-talkie such as the one found in the purse would allow communications that could not be scanned by law enforcement or otherwise intercepted.

The defense case rested largely on the testimony of Frank S., the back seat passenger who was arrested along with defendant. Frank S. testified that at the time of the arrest, he and defendant had been living together. Frank S. had previously seen the front seat passenger, Cammie F., either using or selling drugs, but he had never seen defendant sell or offer to sell drugs. He testified Cammie F. used defendant's cell phone "all the time."

Frank S.'s version of the events leading up to the arrest included the following. Defendant was driving to a gas station when the three spotted Deputy Gagnon parked in the empty gas station parking lot. Cammie F. told defendant something like, "Get out of here," and all three agreed not to pull into the gas station. After defendant drove past the gas station, a patrol car approached them at a high rate of speed. When the patrol car's lights activated, everyone in the car was fearful. Cammie F. was "hysterical" and "flipping out." More specifically, Cammie F. was "pulling stuff out of her purse and shoving it underneath the seats" and was "just flipping out, crying, screaming, shoving stuff everywhere in the car."

Frank S. recounted that, after Deputy Gagnon pulled them over and approached the car, defendant attempted to exit the car, but Gagnon told her to get back in. When Gagnon thereafter ordered defendant out of the car, Cammie F. handed defendant the purse and said, "Take this," just as defendant stepped out. After Gagnon conducted the warrant check and told Cammie F. to leave, Cammie F. attempted to take the purse off the top of the car, but Gagnon said, "That stays here."

During closing argument, defense counsel argued the heroin found in defendant's purse belonged to Cammie F., not defendant. In support, defense counsel emphasized

Frank S.'s testimony that Cammie F., knowing she had a warrant, panicked when Deputy Gagnon pulled the car over, and became hysterical and put her stuff in the purse and elsewhere to avoid arrest. The prosecutor countered this argument, in part by pointing to evidence that Frank S. spoke with Gagnon a few times after his arrest, but never told Gagnon what he supposedly saw that night. It was only a couple of days before trial that Frank S. told anyone that he had seen Cammie F. pass something to defendant in the car.

The jury convicted defendant of transporting a controlled substance for sale. (Health & Saf. Code, § 11352, subd. (a).)

DISCUSSION

While on the stand, Frank S. testified that when Deputy Gagnon initiated the traffic stop, Cammie F. cried out, "I'm going to jail." The prosecutor objected on hearsay grounds. Defense counsel countered that the statement was not being offered for the truth of the matter asserted, and that it was admissible under the spontaneous utterance exception to the hearsay rule. (Evid. Code, § 1240.) Thereafter, defense counsel insisted that Cammie F. was panicked and afraid, and that her statement was a spontaneous utterance concerning her state of her mind and fear of going to jail. Ultimately, the court ruled that Cammie F.'s alleged utterance did not qualify for admission under Evidence Code section 1240 because it was not "a statement that narrates or describes or explains an act, condition or event."

On appeal, defendant's sole contention is that the trial court committed prejudicial error in striking Frank S.'s testimony about Cammie F.'s "I'm going to jail" utterance. Defendant contends reversal of her conviction is required because the trial court's erroneous ruling violated her due process rights by denying her the opportunity to present a meaningful and complete defense to the jury concerning the identity of the individual who possessed the purse and its contents. (*Washington v. Texas* (1967) 388 U.S. 14, 19.) As explained below, even assuming the court's ruling was in error, it provides no basis for a reversal.

Hearsay evidence is evidence of a statement that was made other than by a testifying witness and that is offered to prove the truth of the matter stated. (Evid. Code,

§ 1200, subd. (a).) "Except as provided by law, hearsay evidence is inadmissible." (*Id*., subd. (b).) Evidence Code section 1240 provides: "Evidence of a statement is not made inadmissible by the hearsay rule if the statement: [¶] (a) Purports to narrate, describe, or explain an act, condition, or event perceived by the declarant; and [¶] (b) Was made spontaneously while the declarant was under the stress of excitement caused by such perception."

It is well settled that "[a]s a general matter, the '[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant's right to present a defense.' [Citations.] Although completely excluding evidence of an accused's defense theoretically could rise to this level, excluding defense evidence on a minor or subsidiary point does not impair an accused's due process right to present a defense. [Citation.] If the trial court misstepped, '[t]he trial court's ruling was an error of law merely; there was no refusal to allow [defendant] to present a defense, but only a rejection of some evidence concerning the defense.' [Citation.] Accordingly, the proper standard of review is that announced in *People v. Watson* (1956) 46 Cal.2d 818, 836, and not the stricter beyond-a-reasonable-doubt standard reserved for errors of constitutional dimension (*Chapman v. California* (1967) 386 U.S. 18, 24)." (*People v. Fudge* (1994) 7 Cal.4th 1075, 1102–1103; see Evid. Code, § 354.)

In this case, even assuming the trial court erred in sustaining the prosecutor's hearsay objection to the evidence of Cammie F.'s utterance, such error did not result in prejudice. Frank S. was permitted to testify, and his testimony provided key support for the defense theory that the heroin found in the purse belonged not to defendant, but to Cammie F. alone. Frank S. testified he had previously seen Cammie F. either using or selling drugs, but had never seen defendant sell or offer to sell drugs. To explain away the incriminating text messages on defendant's cell phone, Frank S. told the jury that Cammie F. used defendant's cell phone "all the time." Moreover, Frank S. was permitted to testify about all the other events he witnessed in the car leading up to and during the traffic stop, including his observations that Cammie F. desperately wanted to avoid contact with the officer she saw in the gas station parking lot; that Cammie F. was

"flipping out" and "in a state of hysteria" when Deputy Gagnon activated his patrol car lights; that Cammie F. was crying and screaming as she frantically pulled "stuff out of her purse" and shoved her things under the seats and everywhere else in the car; and that Cammie F. handed defendant the purse and said, "Take this," just as defendant stepped out. That Cammie F.'s spontaneous utterance was not also considered by the jury is of no moment, particularly since, at best, it was cumulative of the foregoing evidence of Cammie F.'s supposedly guilty conscience.

Given the record in this case, including the trial evidence described above, we conclude it is not reasonably probable that a result more favorable to defendant would have been reached in the absence of the claimed error. (*People v. Watson*, *supra*, 46 Cal.2d at pp. 836-837; Evid. Code, § 354.) Accordingly, we find any such error was harmless.

DISPOSITION

The judgment is affirmed.

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Fujisaki, J.

WE CONCUR:

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Siggins, P.J.

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Petrou, J.

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